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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

14 ANTHONY KISER, individually and
15 on behalf of all others similarly situated,
16 Plaintiff,

17 v.

18 PRIDE COMMUNICATIONS, INC.;
19 CRAIG LUSK; and DOES I through X;
and ROE Corporations I through X,
inclusive,

20 Defendants.
21 _____

Case No.:2:11-CV-00165-JCM-VCF
STIPULATION AND ORDER

22
23 The parties, through their respective counsel, hereby stipulate and agree as
24 follows:

25 Whereas, the Court has issued an Order granting final approval of this class
26 action settlement (Docket #144) pursuant to the terms set forth in the parties'
27 stipulation of settlement (Docket #133, Ex. "A" thereto), except as modified by such
28 Order;

1 Whereas, it has come to the attention of counsel for the parties that while the
2 final settlement of this case was for a class under FRCP Rule 23 of 132 specifically
3 identified persons, as set forth in the Court's Order of final approval of class action
4 settlement at ¶ 1 of Docket #144, there are eight class members who were not sent
5 notice of the proposed settlement of this case pursuant to the terms set forth in the
6 stipulation of settlement (Docket #133, Ex. "A" thereto). Counsel for the parties agree
7 that the settlement administrator, RUST consulting, was not responsible for this error
8 which resulted from inaccurate information provided to RUST;

9 Whereas, the eight class members who were not sent a proper notice of
10 settlement were Nathan Hodge, William House, Steven Hughes, Casey Jones, Adam
11 Karner, Reid Katekaru, Charles Labella, and Preston Leblanc. Of these eight class
12 members three, Adam Karner, Reid Katekaru, and William House, filed timely claims
13 with the settlement administrator. The settlement administrator, acting on the
14 erroneous information provided to it, furnished a settlement payment to Adam Karner
15 that was in excess of the amount he was to receive pursuant to the terms of the
16 stipulation of settlement (Docket #133, Ex. "A" thereto) while class members Reid
17 Katekaru and William House were furnished with payments that were smaller than
18 they should have received pursuant to the terms of the stipulation of settlement
19 (Docket #133, Ex. "A" thereto). Class member Adam Karner, who received an excess
20 payment, sustained no injury as a result of this error and the parties are unable to
21 cooperatively resolve the injuries caused to class members Reid Katekaru and William
22 House from such error. Class counsel will be submitting a separate motion seeking
23 relief from the Court on behalf of class members Reid Katekaru and William House;

24 Whereas the notice mailed by RUST to class member Steven Hughes was
25 returned to RUST as undeliverable, despite their efforts to locate a valid mailing
26 address for him, and the proper amount of his class member settlement fund claim was
27 the minimum payment of \$25.00 reserved for class members who had de minimis
28

1 claims, the parties believe it would futile, and is unnecessary, to attempt to further
2 notify him of his right to make any claim as part of this settlement;

3 Whereas the notice mailed by RUST to class member Charles Labella
4 erroneously indicated he was entitled to make a claim on the settlement fund based
5 upon him being entitled to an allocation of 6.0754% of the settlement fund when his
6 proper entitlement, based upon terms of the stipulation of settlement (Docket #133,
7 Ex. "A" thereto), was actually an allocation of 0.0802% of the settlement fund;

8 Whereas class member Charles Labella declined to make a claim on the
9 settlement fund when he was erroneously advised that his entitlement from the
10 settlement fund was over 60 times his actual entitlement, the parties believe it is
11 unnecessary that he be given any further opportunity to make any claim as part of this
12 settlement;

13 Whereas the three class members Preston Leblanc, Casey Jones, and Nathan
14 Hodge, were advised in the notices mailed to them by RUST that they were entitled to
15 receive allocations from the settlement fund that were smaller than the proper
16 allocations reserved for them under the terms of the stipulation of settlement (Docket
17 #133, Ex. "A" thereto);

18 Whereas class counsel and the defendants agree that it is possible Preston
19 Leblanc, Casey Jones, and Nathan Hodge were prejudiced in the exercise of their
20 rights under the class settlement ultimately approved by the Court as a result of them
21 not being advised of the full amount of the available claims they were authorized to
22 make under the terms of the stipulation of settlement (Docket #133, Ex. "A" thereto);

23 Whereas class counsel and the defendants agree that Preston Leblanc, Casey
24 Jones, and Nathan Hodge should be provided with a corrected notice and claim form
25 advising them of their ability to make settlement claims in this case based upon the
26 proper allocations authorized to them under the terms of the stipulation of settlement
27 (Docket #133, Ex. "A" thereto) and that such corrected notice otherwise should
28 conform in all material respects to the previous notice sent to them including giving

1 them 45 days after the mailing of such notice to have their claim forms postmarked,
2 such claim forms having to be received by RUST within 52 days of such mailing;

3 Whereas the settlement administrator RUST has agreed to administer the
4 additional proposed settlement notice and claims and payments to Preston Leblanc,
5 Casey Jones, and Nathan Hodge and defendants have agreed to make any such
6 payments that are due to these three class members if they elect to make such
7 settlement claims. RUST has further advised that the minimum amounts properly due
8 to these three class members, under the terms of the stipulation of settlement (Docket
9 #133, Ex. "A" thereto) and in light of the claims already made on the settlement fund,
10 would be \$3,551.30, \$1,111.86 and \$351.39 respectively;

11 Whereas, the Court, in its granting final approval of this class action settlement
12 (Docket #144) ¶ 10, retained continuing jurisdiction to enforce the settlement and
13 address such post-judgment matters as are appropriate;

14 Whereas, in compliance with the foregoing, the parties hereby request that the
15 Court enter the following proposed Order:

16 **IT IS HEREBY ORDERED**

17 That settlement administrator RUST consulting shall mail a further notice
18 of settlement and claim form to class members Preston Leblanc, Casey Jones, and
19 Nathan Hodge in substantially the same form, and in the same manner, as previously
20 Ordered by this Court to be mailed to the class members. Such notice shall advise
21 these three class members that they are entitled to minimum settlement payments of
22 \$3,551.30, \$1,111.86 and \$351.39 respectively, if they choose to make timely claims,
23 such claims to be postmarked by such class members within 45 days after the mailing
24 of such notice by RUST, such claim forms having to be received by RUST within 52
25 days of such mailing for them to be deemed timely;

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IT IS FURTHER ORDERED

That the settlement administrator RUST shall retain custody of all funds representing amounts from issued, but uncashed, settlement checks in this matter for purposes of funding any claims by class members Preston Leblanc, Casey Jones, and Nathan Hodge, until a further Order of this Court is issued directing the disbursement of any such funds and defendants shall provide to RUST the funds needed, if any, to pay the foregoing claims of class members Preston Leblanc, Casey Jones, and Nathan Hodge within 90 days of RUST mailing the aforesaid directed notice and claim forms to such class members.

IT IS SO ORDERED


U.S. DISTRICT JUDGE

June 15, 2015

DATED

Dated: June 4, 2015

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